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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
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of Minorities
Forty-seventh session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Mr. Bengoa, Mr. Bossuyt, Mrs. Daes, Mr. Eide, Mr. El-Hajjé,
Mr. Fan Guoxiang, Mrs. Forero Ucros, Mr. Guissé, Mr. Hakim,
Mr. Joinet, Mr. Khalil, Mrs. Palley, Mr. Ramadhane,
Mrs. Warzazi and Mr. Yimer: draft resolution

1995/... Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983, in which the Commission requested the Sub-Commission to propose measures designed to ensure respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, prohibiting derogation from certain rights, even in time of public emergency,

Recalling also the following resolutions it has adopted on this question: 10 (XXX) of 31 August 1977, 1983/28 and 1983/30 of 6 September 1983, 1985/32 of 30 August 1985, 1987/25 of 3 September 1987, 1988/24 of 1 September 1988, 1989/28 of 1 September 1989, 1990/19 of 30 August 1990, 1991/18 of 28 August 1991, 1992/22 of 27 August 1992, 1993/28 of 25 August 1993 and 1994/36 of 26 August 1994,

Having taken note of the eighth revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur, Mr. Leandro Despouy (E/CN.4/Sub.2/1995/20 and Corr.1),

Bearing in mind that, in its resolution 1991/34 of 5 March 1991, the Commission on Human Rights invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergency, and that the working group on the administration of justice and the question of compensation postponed consideration of this question until next year in order to take into account the suggestions made by the Special Rapporteur in his ninth report,

Recalling that it requested the Special Rapporteur to consider in depth the question of non-derogable rights in states or situations of emergency, and noting with satisfaction that he organized for that purpose two international expert meetings whose findings he submitted to the Sub-Commission in his eighth report,

1. Takes note with interest of the eighth revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur (E/CN.4/Sub.2/1995/20), and notes with satisfaction that the Special Rapporteur is increasingly enjoying active cooperation from States, as well as competent bodies of the United Nations, the specialized agencies, non-governmental organizations and competent university institutes;

2. Notes with concern that, as is apparent from the eighth report, since 1 January 1985 a state of emergency has been proclaimed, extended or maintained in various forms on 200 occasions in States and territories, whereas in that same period, it has been terminated only some 60 times;

3. Takes note with concern of the Special Rapporteur's observations regarding the frequent adverse repercussions of the state of emergency on constitutional institutions, particularly parliament, whose legislative power and power to monitor the executive are not only limited but may even be reduced to naught and which may, by virtue of a state of emergency, be unconstitutionally dissolved and its members prosecuted or arrested arbitrarily, and considers that these grave consequences merit study in order to guard against them;

4. Invites all States whose legislation does not contain any explicit provision guaranteeing the legality of the introduction of a state of emergency to adopt provisions in conformity with international rules and principles, as developed in the successive reports of the Special Rapporteur and endorsed by the Commission on Human Rights, and similarly invites States whose legislation explicitly provides for states of emergency to ensure that such legislation is in conformity with international rules on the matter;

5. Notes the increasing interest shown by States in receiving technical assistance concerning states of emergency and the rights which cannot be derogated from in such circumstances, and expresses the hope that the Secretary-General will be able to respond promptly and effectively to requests from States in the context of advisory services in the field of human rights and through the Special Rapporteur;

6. Urges Governments, particularly those facing situations of internal unrest, to limit resort to a state of emergency exclusively to circumstances whose seriousness and exceptional character are such that they justify the introduction of such an emergency and to combine such introduction with guarantees, notably with regard to proportionality, duration and the inalienability of non-derogable rights, intended to maintain respect for human rights, so as to prevent a state of emergency from becoming commonplace and from being unjustifiably perpetuated;

7. Notes with deep concern that, to deal with certain situations, including internal unrest or the threat of such unrest, some States do not hesitate to take emergency measures without officially proclaiming a state of emergency and that such measures have serious repercussions on the enjoyment of human rights, and invites all States to ensure that no emergency measure, including suspension or

limitation of certain basic rights, is taken without the corresponding state of emergency being officially proclaimed, in accordance with national law and international rules and principles;

8. Takes note with interest of the principles to be followed for drafting legal provisions on states of emergency contained in the Special Rapporteur's fourth annual report (E/CN.4/Sub.2/1991/28/Rev.1) and the report of the expert meeting on non-derogable rights in states or situations of emergency submitted by the Special Rapporteur in his eighth report, and encourages the Special Rapporteur to submit his conclusions and recommendations on this subject in his ninth report;

9. Takes note of the consultations with institutions and experts already held by the Special Rapporteur pursuant to Sub-Commission resolution 1993/28 of 25 August 1993 on the subject of receiving, storing and retrieving information, through a data bank, on states of emergency and related human rights questions, and invites him to pursue and broaden such consultations so as to report to it on the results at its forty-eighth session;

10. Requests the Special Rapporteur to submit to the Commission on Human Rights at its fifty-second session an updated list of States which have proclaimed, extended or terminated a state of emergency since 1 January 1985, so that the Commission will have the latest and most comprehensive information possible on the past 10 years;

11. Requests the Secretary-General to place at the disposal of the Special Rapporteur all the human and material resources needed to carry out his mandate in accordance with the foregoing;

12. Recommends the following draft resolution to the Commission on Human Rights for adoption:

"The Commission on Human Rights,

Endorsing Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/... of ... August 1995,

Recommends the following draft resolution to the Economic and Social Council for adoption:

'The Economic and Social Council,

Recalling Commission on Human Rights resolution 1996/... of ... 1996 and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/... of ... August 1995, entitled "Question of human rights and states of emergency",

1. Approves the Sub-Commission's requests to the Special Rapporteur on human rights and states of emergency, Mr. Leandro Despouy, to fulfil his mandate, notably relating to (i) the updating of the lists of States which have proclaimed, extended or terminated a state of emergency; (ii) the submission of conclusions and recommendations concerning non-derogable rights in states or situations of emergency; and (iii) the continuation of his consultations through the establishment of a database on states of emergency and related human rights questions;

2. Requests the Secretary-General to place at the disposal of the Special Rapporteur the human and material resources to fulfil his mandate in accordance with the foregoing.'"